

complaint

A company which I'll refer to as "B" complains that The Society of Lloyd's ("Lloyd's") unfairly declined a claim under B's commercial property insurance policy.

Ms C is a director of B and brings the complaint on B's behalf. They are represented by a third party, however for ease I will refer only to Ms C and B.

background

B purchased a property in 2016 with the intention of renovating it and changing the property's use to a rental property, however due to ongoing planning issues the property remained unoccupied and unfurnished. During this time, B had the benefit of a commercial property insurance policy with Lloyd's and to satisfy the conditions of that policy, appointed a third party to attend and manage the property while it was unoccupied.

In March 2017 the property was broken into and set alight. The fire caused extensive damage to the property and was attended by the fire brigade. Following this, Lloyd's commissioned a forensic investigator to report on the matter. The forensic investigator concluded that the fire was deliberately set by arsonists – a matter which isn't in dispute.

However the forensic investigator also concluded that the likely point of entry for the arsonists was through the garage doors, which it believes were unlocked. The forensic investigator spoke to the company managing the property, who said at the time of the loss they only had keys for the front and back doors of the property, and that they hadn't checked the garage and whether it was locked as a result. As it is a condition of the policy that all doors and windows are securely fastened and locked for cover to be in operation, and it didn't think this condition had been met, Lloyd's declined the claim.

Ms C didn't agree with its decision. In summary she said that Lloyd's hadn't carried out a thorough investigation and that the condition had been met as she had employed a third party to check the property and ensure all entrances and exits were locked.

Ms C also referred to a note from the fire brigade which mentions the front door being unlocked. And she says that ultimately the claim can only be declined for a breach of the condition where the breach increased the risk of the loss – and as the intruders seemingly broke in to steal copper pipework and commit arson, this would have happened regardless of whether any doors or windows were locked. Ms C feels the perpetrators would have entered the property through any means necessary. And she says that the garage door is likely to have been opened by the arsonists as an exit point, rather than it being unlocked in the first place.

On 4 March 2021, I issued a provisional decision. In it, I said:

"I have considered the arguments put forward by Lloyd's and I can understand its position. The relevant condition precedent states that for unoccupied buildings, the policyholder must take all reasonable precautions to secure the building against entry to intruders, including making sure "all doors and windows are securely fastened and locked". I think this condition is clear and there doesn't appear to be any dispute about that.

So, I've then gone on to consider whether there is sufficient evidence that there has been a breach of the condition precedent. When seeking to rely on a breach of condition to decline a claim Lloyds needs to show that the condition was most likely breached – and that the breach was material to the loss.

The evidence in this case is conflicting and where that's the case, I've considered what I believe to be more likely on the balance of probabilities. And having done so, I'm not satisfied Lloyd's has done enough to evidence that there has been a breach.

As above, Lloyd's appointed a forensic investigator to look into the loss. And, on the face of it, the forensic investigator's report states that there is no evidence of forced entry at any of the doors or windows at the property. And he said he was able to open the garage door without keys when he visited the property a few days after the fire. I can see why Lloyds might have had concerns about the garage door being unlocked given this information. It suggests the perpetrators had been able to access the property without any kind of force, but instead pulled open and walked in through the garage door.

However, I don't think Lloyd's has shown this was more likely than not an unlocked entrance point. I've explained why I think this below.

The forensic investigator Lloyd's appointed did interview someone from the property management firm tasked with checking B's property was secure. And I think this was reasonable, given it's likely the property management firm was the last to attend the property before the break in. But the forensic investigator chose not to interview the property management agent who had actually attended the property five days prior to the loss.

The person the forensic officer spoke to was an agent from a different branch – who was standing in for the usual agent, as they were on annual leave at that time. The forensic investigator says this agent told him they weren't aware of the garage at the property and didn't have a key for the garage doors. I'm not satisfied this was sufficient to suggest the firm didn't check the garage doors normally, given this person didn't work at the branch from which the property was looked after, and didn't have a prior relationship with the building.

I think it would have been reasonable for the investigator to talk to the actual person that visited the property. Given the above person interviewed wasn't in regular attendance of the property, was from a different branch of the firm, and wasn't the person that attended before the loss, I don't think relying on these comments provides persuasive evidence of the situation with the property prior to the loss. I also note no contemporaneous notes of this interview have been provided.

The regular agent that did usually visit the property has confirmed Ms C's version of events – that it did have keys to the garage and was aware there was a garage on site, which it checked when it visited.

I've also reviewed the checklists completed showing the checks carried out on the property by B's appointed agents leading up to the fire. Five days before the fire, the property management company attended the property and completed a checklist. On it, the question states "Are all entrance doors locked on departure?". Yes is then circled next to it, indicating that the property management company checked all entrance doors on departure.

B's representative has also provided a signed statement from the agent who regularly checked the property confirming that he had checked the garage doors and they were locked and secured in the days leading up to the fire. Lloyd's hasn't provided any firm evidence to dispute what the agent has said here, or to show it's likely anyone came to the property and unlocked the garage door after the check made, and prior to the fire. So, as this agent was likely to be the last person at the property before the intruder, I find his testimony to be more persuasive than the previous agent the investigator spoke to. And this agent does give persuasive evidence the garage door was locked prior to the loss.

In addition to this, from reviewing the file, I can see the forensic investigator initially noted that the fire brigade, when attending, had broken into the property via the back door to gain entry. This suggested the back door was locked at the time the perpetrator entered the property. And again, suggested it was likely the only way those who set fire to the property could have got in was through the unlocked garage.

But the emergency services weren't the ones to force the back door. The forensic investigator noted he had made a mistake in this assumption. The fire brigade had entered through the front door of the property which was already unlocked, not the back. So, this raises a question as to whether the perpetrators entered the property not through an unlocked garage door but forced their way into the property via another entry point.

After learning this, no further investigations appear to have been carried out in regard to the security of the property – including the back door and whether this area was perhaps how the perpetrators got into the property. And therefore, whether other unlocked points were unlocked for exit rather than entry purposes. So I don't think Lloyds has fully explored how the perpetrator entered the property and on balance I don't think it has shown that it is more likely that the garage door was left unlocked.

Lloyd's decision to decline the claim seems to have been reached on the basis of several assumptions, many of which Ms C and her agents have been able to raise doubt over. And I've seen no actual evidence that the condition precedent was breached. In addition to this, I have considered whether there is anything more I reasonably could have expected B to do in order to meet the wording of the condition. B has taken reasonable steps to ensure the policy condition is met - she has employed a management company to check the property and Lloyd's has been provided with a checklist from the property management company confirming all internal doors and windows were secured.

So taking all of this into account, I'm not satisfied that Lloyd's have sufficiently evidenced that there has been a breach of the unoccupancy condition precedent. And it follows that I don't think it has acted reasonably in declining the claim."

Ms C's representative responded to say it accepts the provisional decision. Lloyd's responded to say it didn't agree and asked me to reconsider its previous comments – but didn't provide any further comments on my decision. So the complaint has been passed back to me to decide.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I remain of the opinion that the complaint should be upheld.

Lloyd's has asked me to reconsider its previous comments to me from its underwriter, which I have done. In those comments, Lloyd's has outlined that it remains of the opinion that unsecured garage doors were the likely point of entry and, as such, there was a breach of the condition precedent which caused the loss.

However much of the evidence raised relates to the testimony given by the agent from Ms C's property management company, which I have already considered. The agent that provided the testimony wasn't the agent that attended the property days before the fire. And I'm not satisfied that the garage doors being open after the fire is sufficient evidence to show they were open before the fire and as such, that B breached the condition precedent.

So, as neither party has provided any new comments or evidence for me to consider, I see no reason to depart from my previous findings. I remain of the opinion that I don't think Lloyd's has sufficiently evidenced that there has been a breach of the unoccupancy condition precedent. So it follows that I don't think it has acted reasonably in declining the claim.

Putting things right

Lloyd's should put things right by doing the following:

- Reconsider the claim under the remaining terms of the policy;
- Pay B a total of £300 compensation for the inconvenience caused to it

my final decision

My final decision is that I uphold this complaint about The Society of Lloyds, who should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C on behalf of B to accept or reject my decision before 27 April 2021.

Sara Falzon
ombudsman